

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: ) For: METHOD AND APPARATUS  
Vijayalakshmi R. Raveendran ) FOR IMPROVING VIDEO  
 ) QUALITY OF LOW BIT-RATE  
Application No.: 10/802,285 ) VIDEO  
 )  
Filed: March 16, 2004 ) Examiner: David P. Rashid  
 )  
Confirmation No.: 3631 ) Group No.: 2624  
 )  
 ) Docket No.: 030065

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Kindly enter the subject Pre-Appeal Brief Request for Review along with the accompanying Notice of Appeal, the time for responding having been extended until January 27, 2008.

### **REMARKS**

In accordance with the OG Notice dated 12 July 2005, the Applicants respectfully submit the subject request for panel review. Claims 1-21 and 31-42 are pending in the subject application.

#### **Status Of Pending Claims**

Claims 1-3, 13-15 and 31-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan (U.S. Patent Pub. No. 2004/10096111) in view of Frishman (U.S. Patent Pub. No. 2003/0044080). Claim 36 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan and Frishman in view of Tan (U.S. Patent No. 6,188,799) and Varma (U.S. Patent Pub. No. 2003/0235250). Claim 40 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan '111 and Frishman in view of Thyagarajan. Claims 41-42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan and Frishman in view of Tan.

Claims 4-12, 16-21 and 37 are indicated as being allowable if rewritten to include the limitations of their base claim and any intervening claims.

In view of the errors set forth below, it is respectfully submitted that a *prima facie* rejection of the claims under 35 U.S.C. §103(a) has not been made.

#### **Disqualification Of Thyagarajan As Prior Art Under 35 U.S.C. §103(c)**

Please refer to Applicants' argument found on pages 2-3 of the Response After Final submitted on 16 January 2008. For sake of convenience, the argument already of record is repeated below.

Claims 1-3, 13-15 and 31-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the reference of Thyagarajan (U.S. Patent Pub. No. 2004/10096111) in combination with one or more other references as noted above.

35 U.S.C. §103(c) states that "subject matter developed by another person, which qualifies as prior art only under one of more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed

invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person".

The present application has a priority date of **17 March 2003**, which is prior to the publication date of the Thyagarajan reference (20 May 2004). Thus, the Thyagarajan reference cannot qualify as prior art under 35 U.S.C. §102(a) or (b). Additionally, it is obvious from the face of the reference that it is not a 35 U.S.C. §102(c) or (d) reference. Thus, it may only be a reference under one or more of subsections (e), (f) and (g) of 35 U.S.C. §102.

Applicant also notes that the Thyagarajan reference and the present application were, at the time the invention covered by the present application was made, owned by the same person or subject to an obligation of assignment to the same person, that person being Qualcomm, Inc. Both the Thyagarajan reference and the present application have been so assigned and the present application was subject to such an assignment at the time of the invention. Thus, according to 35 U.S.C. §103(c) (and MPEP 706.02(l)(2)), the Thyagarajan reference cannot be used to preclude the patentability of the present application and is an improper reference.

Accordingly, reconsideration and withdrawal of the outstanding obviousness-based rejections as applied to Claims 1-3, 13-15 and 31-35 is respectfully requested.

**Conclusion**

Applicant believes that no additional fees are required. Nevertheless, should the Commissioner determine that additional fees are required, the Commissioner is hereby authorized to charge any required fees, or credit any overpayment, to Deposit Account 17-0026 in the name of QUALCOMM, Incorporated.

Respectfully submitted,

Dated: 25 January 2008

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